

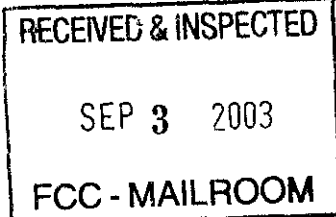
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September 2, 2003

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

RE: Petition for Reconsideration
FCC Dockets 02-277, 01-235, 01-317, 00-244 and 03-130

Dear Ms. Dortch:

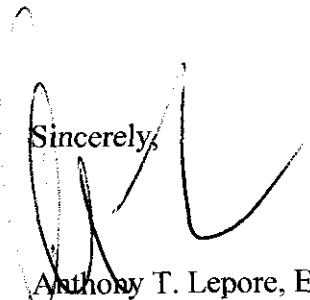
Please find enclosed, on behalf of ARSO RADIO CORPORATION, a Petition for Reconsideration on the above captioned dockets filed pursuant to 47 C.F.R. §1.429.

A copy of this letter together with the Petition for Reconsideration is being filed electronically through the ECFS System and an original and 11 paper copies are being transmitted to the FCC's Capital Heights facility via Federal Express.

Petitioner requests the Commission to review the enclosed and grant the requested relief sought therein.

If you have any questions concerning this matter, do not hesitate to contact the undersigned.

Sincerely,

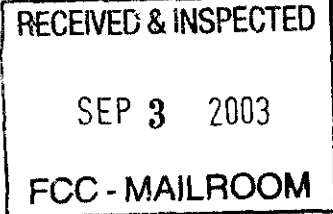

Anthony T. Lepore, Esq.
For the Petitioner

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**Before the
Federal Communications Commission
Washington, D.C. 20554**



In the Matter of)	
)	
2002 Biennial Regulatory Review – Review)	MB Docket 02-277
of the Commission’s Broadcast Ownership)	
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications Act)	
of 1996)	
)	MM Docket 01-235
Cross-Ownership of Broadcast Stations and)	
Newspapers)	
)	MM Docket 01-317
Rules and Policies Concerning Multiple)	
Ownership of Radio Broadcast Stations in)	
Local Markets)	MM Docket 00-244
)	
Definition of Radio Markets)	
)	MB Docket 03-130
)	
Definition of Radio Markets for Areas Not)	
Located in an Arbitron Survey Area)	

***PETITION FOR RECONSIDERATION
of
ARSO RADIO CORPORATION***

ARSO RADIO CORPORATION (hereinafter “ARSO”) hereby submits this
Petition for Reconsideration of the Commission’s “media ownership” dockets, in
particular MM Docket 01-317 (“Multiple Ownership of Radio Broadcast Stations in
Local Markets”) and MM Docket 00-244 (“Definition of Radio Markets”), pursuant to 47
C.F.R. §1.429.

ARSO is the licensee of 7 radio stations on the island of Puerto Rico and the
principals of ARSO have attributable interests in 8 other radio stations in Puerto Rico.

Incorporation by Reference

For purposes of Commission review, and potential judicial review, ARSO by necessity incorporates all documents filed in the above captioned dockets, although for purposes of this Petition, our argument relates solely to the decision to adopt the Arbitron “Metro” as the appropriate definition of a radio market for purposes of calculating permissible local ownership limitations.

Requested Relief

ARSO requests, for the reasons set forth hereinafter, that the definition of the Puerto Rico Radio Market be modified to reflect the geographic and social realities of the island in accordance with the definitions propounded by the Office of Management and Budget, or an exception be created for the definition of Radio Market for Puerto Rico in accordance with past Commission precedent or the Puerto Rico radio market be defined in a similar fashion as those markets not in an Arbitron Survey Area (as is pending in MM Docket 03-130).

Background

In the Commission’s ***Report and Order and Notice of Proposed Rulemaking*** (FCC 03-127) adopted on June 2, 2003 and released on July 2, 2003, (hereinafter, the “*Report and Order*”) the FCC adopted the Arbitron Metro Survey Area (“Arbitron Metro”) as the definition of radio market for the purpose of determining compliance with the local radio ownership rule.¹ In adopting the Arbitron Metro, the *Report and Order* reasoned that “*Where a commercially accepted and recognized definition of a radio market exists, it seems sensible to us to rely on that market definition for purposes of applying the local radio ownership rule. Arbitron, as the principal radio ratings service*

¹ *Report and Order* paragraph 273

in the country, has defined radio markets for most of the more populated urban areas of the country. These radio markets – Arbitron Metros – are Arbitron’s primary survey area, which in turn are based on Metropolitan Areas (MAs) established by the Office of Management and Budget (OMB) (emphasis added)”² The *Report and Order*, in footnote 573, provided a further explanation of MAs and provided reference material concerning the methodology the OMB used in defining MAs and a link to information about the most recent MA listing, incorporating data from the 2000 census. The *Report and Order*, in reaching its conclusion to use the Arbitron Metro, argued that “people in the United States tend to be clustered around specific population centers”³ and adopted one commenter’s position that “Radio stations compete in Arbitron markets”⁴. As a result, the *Report and Order* concluded that the Arbitron Metro was the appropriate standard for the purpose of calculating compliance with the local ownership rule.

Argument

The Commission’s adoption of and reliance upon Arbitron’s Metro definition was predicated on the assumption (as noted above) that the Arbitron Metro was, in turn, based on the OMB’s Metropolitan Areas (MAs). Indeed, the *Report and Order* extensively footnoted (in footnote 573) how the OMB defined Metropolitan Areas and where to find the most updated information concerning the MAs. This assumption is likely correct in most of the United States but it is completely erroneous when applied to Puerto Rico. Arbitron’s Metro definition for Puerto Rico is the ***ENTIRE*** island of Puerto Rico.⁵ However, the OMB does ***NOT*** define the entire island of Puerto Rico as a Metropolitan

² *Report and Order* at 275

³ *Report and Order* at 273

⁴ *Report and Order* at 276

⁵ see Arbitron Metro Map: (http://www.arbitron.com/downloads/Arb_US_Metro_Map_02.pdf)

Area. Indeed, according to the most recent OMB MA list, which incorporates information from the 2000 census, Puerto Rico has **EIGHT** (8) Metropolitan Statistical Areas and **THREE** (3) Combined Statistical Areas (which are larger population areas consisting of combinations of Metropolitan Statistical Areas and/or Micropolitan Statistical Areas).⁶ According to the OMB's Bulletin, Metropolitan Statistical Areas have "at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties"⁷. Arbitron, presumably because of the geographic isolation of Puerto Rico from the United States and as a matter of convenience, simply defined the entire island as one market. However, the assumptions made in the *Report and Order* (i.e. "Radio stations compete in Arbitron markets") do not hold true in Puerto Rico because of geography. For example, it is impossible for a station in Mayagüez to compete with a station in San Juan because intervening terrain and geography (including Mt. Cerro de Punta, at 4,390 feet), precludes each station's signals from being heard in the other's community. Yet, because of the Arbitron Metro definition encompassing the entire island, a Mayagüez station and a San Juan station are now presumed to be in the same radio market. The conclusion that stations in these cities would compete with each other for the same population ("*radio stations serve people, not land*"⁸) is entirely misplaced. The size (three times that of Rhode Island) and topography of the island makes such a conclusion a physical impossibility. It is precisely because of the unique character and topography of Puerto Rico that the Commission has long-established precedent in

⁶ see List 5, Attachments to OMB Bulletin 03-04 (http://www.whitehouse.gov/omb/bulletins/b03-04_attach.pdf)

⁷ *Id.*

⁸ *Report and Order* at 273

treating radio stations in Puerto Rico differently than those on the mainland United States. For example, the Commission recognized in *St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329, 74 Rad. Reg.2d (Pike & Fisher) 202 (1993) that adoption of alternative standards for purposes of determining protected and interfering contours was prudent and necessary to accommodate the greater permissible HAAT that Puerto Rico and Virgin Island stations antennas are allowed (to overcome geographic obstacles). This was later adopted as rule revision in the Commission's Second Report and Order in MM Docket 98-93 (*In the Matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules – FCC 00-368*), 15 FCC Rcd 2149 (2000), all as a result of the “unique topography” of the island (see Short-spaced FM Station Assignments by using Directional Antennas, *MM Docket 87-121, FCC 91-273*, 6 *FCC Rcd* 5356 at 51); see also 47 C.F.R. §73.211(b)(3). Other examples include 47 C.F.R. §73.1210 (TV/FM Dual Language broadcasting in Puerto Rico) and 47 C.F.R. §73.807 (Minimum distance separation between LPFM stations). The geographic obstacles are further evident by the fact that there are a greater number of AM and FM stations licensed to the island of Puerto Rico than to a comparable geographic sized area in the mainland United States.⁹

Petitioner suggests, in light of the foregoing evidence that the Arbitron “Metro” definition for Puerto Rico is *not* based on the OMB's Metropolitan Areas, that the Commission reconsider its decision in the *Report and Order* as it relates to Puerto Rico and that it;

⁹ BIA reports there are 94 “Full Power” radio stations licensed to Puerto Rico. A check of the FCC's CDBS database shows 71 licensed AM stations and 52 licensed FM stations (not including translators, boosters, licensed but silent stations, experimental stations and construction permits). The island is a rectangular shape of land approximately 35 miles north to south and 100 miles east to west.

- (1) define the local radio markets in Puerto Rico in accordance with the OMB's eight (8) Metropolitan Statistical Areas on the island; or
- (2) create an exception for stations in Puerto Rico, as established by Commission precedent, and define the relevant local radio markets as the three (3) Combined Statistical Areas as defined by the OMB; or
- (3) remove Puerto Rico from the Arbitron Metro definition and include it in the pending rulemaking herein in Docket 03-130 for non-Arbitron surveyed markets.

As aptly noted by the Commission in the *Report and Order*, "people in the United States tend to be clustered around specific population centers"¹⁰. The same conclusion holds true for Puerto Rico, and thus it would be entirely appropriate to employ the first suggestion and define the relevant market as each of the eight (8) Metropolitan Statistical Areas as established and defined by the OMB. However, should the Commission believe this definition to be too narrow and not appropriate in light of its reasoning in the Report and Order, Petitioner suggests that the OMB's Combined Statistical Areas (CSAs) for Puerto Rico, which divide the island into three (3) population areas, would be an appropriate definition. As a final alternative, Petitioner would suggest removing Puerto Rico from the Arbitron Metro definition (as has been demonstrated is wholly inappropriate as Arbitron's definition is NOT the same as the OMB's) and utilizing one of the definitions suggested for those markets which are not defined by Arbitron in the pending proceeding (MM Docket 03-130) as set forth in the *Report and*

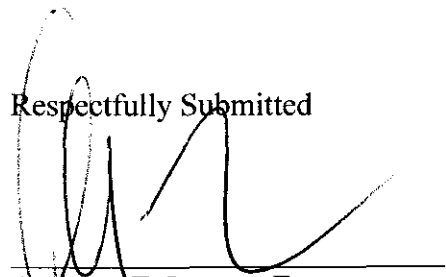
¹⁰ *Report and Order* at 273

Order's Notice of Proposed Rulemaking¹¹. Parenthetically, Petitioner would note that among the proposals in Docket 03-130 for defining the relevant market in non-Arbitron surveyed areas is to use the OMB's Metropolitan Area (MA) definitions, (updated from the 2000 Census), which is also one of the Petitioner's suggestions herein. Indeed, the Commission has, in similar contexts, used the OMB's MA definitions for its purposes, such as defining "smaller markets" in the context of the new EEO rules.¹²

Conclusion

For the reasons set forth herein, Petitioner ARSO requests the Commission grant its request for reconsideration of the matters addressed in this Petition and grant relief by one of the three (3) options provided herein.

Respectfully Submitted



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¹¹ *Report and Order* 657-670

¹² See 47 C.F.R. 73.2080(e) which uses OMB definitions and standards for defining "smaller market" for the purposes of determining the number of EEO initiatives a station must undertake during a license term.